

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

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Petition of Southeast Telephone, Inc., for)
Arbitration of Certain Terms and)
Conditions of the Proposed Agreement with)
Kentucky ALLTEL, Inc., Pursuant to the) No. 2003-00115
Communications Act of 1934, as amended by)
The Telecommunications Act of 1996)

**RESPONSE OF SOUTHEAST TELEPHONE, INC.
TO ALLTEL PETITION FOR SECTION 251(f)(2)
“FEWER THAN 2%” RURAL CARRIER SUSPENSIONS
AND MODIFICATIONS**

Comes now SouthEast Telephone, Inc., (“SouthEast Telephone”), by counsel, and for its response to the Petition of Kentucky ALLTEL, Inc. (“ALLTEL”) for Section 251(f)(2) “Fewer than 2%” Rural Carrier Suspensions and Modifications, states as follows:

In its response to SouthEast Telephone’s Petition for Arbitration, ALLTEL requested this Commission, pursuant to section 251(f)(2) of the Telecommunications Act (“the Act”) to suspend or modify its interconnection obligations under the Act. SouthEast Telephone objects to this Petition and requests the Commission to deny ALLTEL’s request.

**I. ALLTEL’S PETITION IS NOT SUPPORTED BY
ANY EVIDENCE**

Under Section 251(f)(2), it is not enough that a local exchange carrier seeking suspension and/or modification has fewer than 2 percent of the Nation’s subscriber lines. The carrier also has the burden of proof of demonstrating to the State commission that the suspension or modification is necessary to avoid a significant adverse economic impact

on users of telecommunications services generally; to avoid imposing a requirement that is unduly economically burdensome, or to avoid imposing a requirement that is technically infeasible, and is consistent with the public interest, convenience and necessity.

The carrier must not simply make empty allegations consistent with the statute; it must introduce substantive evidence supporting its allegations.

To be considered by a State commission, the FCC has held that the Petition must contain some supporting evidence that the application of the requirements of §251 would cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry.¹ The reasoning behind this requirement was explained by the FCC:

We believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent and for the period of time, that policy considerations justify such exemption, suspension or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request is made, or to justify suspension, or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of this requirement would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry.

Id.

In the present case, ALLTEL fails to support its Petition with any substantive data whatsoever. ALLTEL simply makes sweeping and unsupported allegations, which fail to meet the standards set forth by the FCC.

¹ CC Docket 96-98, ¶1262, page 597, First Report and Order adopted August 1, 1996, released August 8, 1996.

**II. ALLTEL WAIVED ITS EXEMPTION BY
ENGAGING IN NEGOTIATIONS WITH
SOUTHEAST TELEPHONE PURSUANT TO THE
ACT.**

In its Response to SouthEast Telephone's Petition for Arbitration, ALLTEL admits that it engaged in negotiations with SouthEast Telephone pursuant to the Act. As this Commission is aware, the duty to negotiate interconnection agreements is a duty placed on telecommunications carriers by Section 251 of the Act. By engaging in these negotiations, without providing notice of its intent to seek a rural exemption, ALLTEL waived its interest in seeking an exemption from these duties.

In another case before this Commission in which ALLTEL was a party, this Commission held that:

. . . it is beyond question, as a matter of either logic or law, that Comm South and Universal submitted "bona fide" requests for "interconnection" or "services" to ALLTEL when they first requested negotiations. 47 U.S.C. §251(f). Because ALLTEL wished to assert the rural exemption from Section 251's obligation to negotiate, it should have asserted the exemption at that time. Its failure to do so, coupled with the inflated pricing it demanded from new market entrants and subsequent lawsuits to uphold its anticompetitive pricing scheme, have delayed the introduction of meaningful competition in ALLTEL's service area and therefore have adversely affected the Kentucky consumers within that area.²

Under this reasoning, ALLTEL's waived its ability to pursue a rural exemption under the Act by failing to petition this Commission in a timely manner once a bona fide request for negotiations was received. Its petition should be denied.

**III. ALLTEL'S PETITION IS INCONSISTENT WITH PUBLIC
INTEREST, CONVENIENCE AND NECESSITY.**

As this Commission is well aware, ALLTEL acquired the Kentucky assets of Verizon South, Incorporated, in order to conduct business as an incumbent local

² In the Matter of: The Interconnection Agreement between Universal Telecom, Inc. and ALLTEL Telecommunications Service Corporation, Ky. Pub. Service Comm'n, Case No. 200-027.

exchange carrier in Kentucky. In its petition to acquire those assets, an evidentiary proceeding was held in which ALLTEL informed this Commission that it did not “presently anticipate the need to assert and suspension or modification.”³ Apparently, that has changed.

In the present case, granting ALLTEL a suspension or modification of the duties set forth under section 251 would limit or eliminate competition in the Kentucky regions served by ALLTEL. It would lead to fewer choices for Kentucky’s consumers and the loss of hundreds of jobs throughout the state as competitive exchange carriers, such as SouthEast Telephone, would no longer be able to serve these important rural regions.

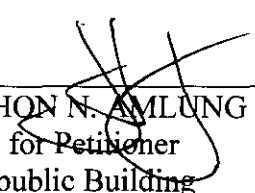
As the FCC stated, the purpose of the statute under which ALLTEL seeks suspension or modification is not to eliminate competition for a rural LEC. It was intended to help small rural carriers from enduring undue economic burden beyond that imposed by healthy competition. ALLTEL’s petition for suspension or modification only serves the interest of ALLTEL. Kentucky’s consumers are served by vibrant competition.

ALLTEL’s petition should be denied.

WHEREFORE, SouthEast Telephone respectfully requests this Commission to deny ALLTEL’s petition for suspension or modification pursuant to section 251(f)(2).

³ In the Matter of: Petition by ALLTEL Corporation to Acquire the Kentucky Assets of Verizon South, Incorporated, Ky. Pub. Service Comm’n, Case No. 2001-00399.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, this the 23rd day of September, 2003, to:

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